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OFFICE OF PETITIONS

In re Application of :
Partlow et al. :
Application No. 10/751,086 :
Filed: January 2, 2004 : ON PETITION
Attorney Docket Number: :
PARTLOW2 :

This is in response to the Petition Under 37 CFR § 1.10, 37 CFR § 1.182 and Any Other Applicable Rule to Grant Original Filing Date (Application was Complete), filed September 23, 2004. The petition is properly treated under 37 CFR 1.53.

The petition is dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.53." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application was filed on January 2, 2004. However, on June 18, 2004, the Office mailed a Notice to File Missing Parts of Nonprovisional Application ("Notice"), informing Applicant, *inter alia*, that a filing date had been accorded; however, pages 76, 83 and 84 of the specification appeared to have been omitted from the application.

In response to the Notice, Applicant files the instant petition wherein Applicant avers that the application was complete when filed, as acknowledged by postcard, and that the specification pages were subsequently lost by this Office. Applicant also avers page 84 of the description and claims does not exist. In support of these assertions, Applicant files a declaration of Denise Kacinski, dated September 20, 2004, wherein Ms. Kacinski declares that she reviewed the application for completeness.

A review of the instant petition and the application file reveals that no return receipt postcard has been filed with the instant petition. The best evidence of what was filed on January 2, 2004, is applicant's postcard receipt. "If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.." MPEP § 503.

Regarding the Kacinski declaration, the evidence has been considered, but is not found persuasive that the application was complete when filed on January 2, 2004. The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that no pages 76, 83 (or 84) of the specification were filed on January 2, 2004, since no such pages are present in the file. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The declaration relied upon contain the declarants' recall of routine events which occurred 9 months earlier and are not more persuasive than the record of what was filed as shown by the official file.


Conclusion

If pages 76, 83 (or 84) of the specification were not present on the January 2, 2004 filing date, they cannot be considered a part of the original disclosure of the application. Petitioner has failed to satisfactorily demonstrate that pages 76, 83 (or 84) of the specification were present in the Office on January 2, 2004. Therefore, the application cannot be accorded the January 2, 2004 filing date with pages 76, 83 (or 84) of the specification as a part of the original disclosure.

This petition is dismissed without prejudice. If applicant has a copy of his return-receipt postcard, the copy should be filed with a Request for Reconsideration of Petition.

The application is an Image File Wrapper ("IFW"), and as such, no forwarding of the file is necessary.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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Office of Petitions